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February 7, 2022

To: Senate Committee on Elections, Election Process Reform and Ethics Re: Opposition to
SB 941, SB 936, SB 937, SB 938, SB 939, SB 942, SB 943 and SJR 101

The League of Women Voters of Wisconsin believes that good government depends on the informed and active participation of its citizens, and that voting is a fundamental citizen right which must be guaranteed. Wisconsin election laws should provide citizens with maximum opportunity for registration, voting at the polls and absentee voting. Further, election administration should be adequately coordinated and funded to achieve statewide standards uniformly applied, verifiable results and local municipal effectiveness.

Since its founding in 1920 the League has studied many of the issues addressed in the bills before you in today's public hearing. Our members have agreed and affirmed the positions and principles stated above. We oppose several of the bills you are considering today for the following reasons:

- Some make it much harder for voters to apply for and cast an absentee ballot;
- Some add new levels of bureaucracy to election administration that will only complicate procedures and slow productivity for election officials;
- Some can only be characterized as a power grab by a legislative branch seeking to control elections.

Given that none of these proposals would improve elections, they would be a net loss for voters.

Therefore we oppose the following bills and urge you to reject them:

SB 941 This bill imposes requirements on the Wisconsin Elections Commission (WEC) that are not required for any other state agency. It would allow inappropriate legislative oversight of an agency tasked with overseeing the electoral activities that impact all Wisconsin voters. Voters have the right to expect electoral agency functions to be monitored and not micromanaged.

SB 936 This bill requires that, in the event of a recount, the municipal clerk is required to print and make available paper copies of all absentee ballot applications received electronically for the election. This is an impractical demand, especially in a statewide election. Also, legislators should be given copies only of complaints that could involve their own campaign or that of an opponent.

SB 937 This bill makes it harder for citizens with long-term disabilities to exercise their vote, while doing nothing to improve the security of elections.

SB 938 While it is appropriate to maintain an accurate list of electors, this bill is deeply flawed. It would disenfranchise many of the same groups of electors who are already burdened by voter photo ID and restrictive proof of residence requirements. It requires that WEC's voter registration database be coordinated with databases in various federal and state agencies. In particular, the Systematic Alien Verification for Entitlements (SAVE) database is limited to a select group of non-citizens and is not a comprehensive list. Updates are not frequent. The result would be false positives that could disenfranchise qualified citizens.

SB 939 Similar to SB 937, rather than improve the voter experience this bill complicates it for no apparent reason. Absentee voters should not have to provide ID for every election when the Clerk can keep a copy of the ID on file. This bill requires voters to submit an application (with ID) in addition to completing the certificate envelope.

SB 942 This very punitive bill singles out the Wisconsin Elections Commission for an unreasonable level of legislative control. Threatening to reduce staff in a key state agency does not consider what is best for voters, and it certainly will not improve elections.

SB 943 Like SB 942 this bill singles out the WEC for an unreasonable level of legislative control over elections. This potentially harmful oversight will only add confusion for local election officials and certainly will not improve elections.

SJR 101 It is reasonable for private funds to have some regulation, but the practice should not be banned. A constitutional amendment to ban private resources is uncalled for and utterly inappropriate.



Testimony of Matt Rothschild

Executive Director, Wisconsin Democracy Campaign

To the Senate Committee on Elections, Election Process Reform, and Ethics

In opposition to SB 934, SB 935, SB 936, SB 937, SB 939, SB 940, SB 941, SB 943, and SJR 101

Feb. 7, 2022

Distinguished Chair and other Distinguished Members of this Committee:

I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign. Since 1995, we've been tracking and exposing the money in Wisconsin politics, and we've been advocating for a broad range of pro-democracy reforms.

Before I get going, I would be remiss if I failed to acknowledge the tremendous public service that the chair of this committee has rendered in her career, first as a county clerk, then as a member of the Assembly, and most recently here in the Senate.

We may not agree on a lot of ideological issues, Madame Chair, but we certainly agree on the need to defend our democracy. I really appreciate your outspokenness on this bedrock principle, and your frank acknowledgment of the severity of the threat posed to our democracy by those who refuse to accept the legitimacy of the 2020 elections and instead peddle one lie after another and one smear after another for their own political gain or personal gratification.

You've been a profile of courage, and you'll be missed, and I wish you all the best in your retirement.

I've got some specific problems with many of these bills, as well as with the Joint Resolution.

But rather than go tediously through that itemization, let me instead make a few general remarks and then offer just a couple germane points, if I might.

First, I would like to underline an observation that Republican Senator Rob Cowles has made about our elections. He noted that our elections are “safe and secure.”

Second, there has been a drumbeat of baseless accusations and character assassinations against the dedicated administrator and the tireless staff of the Wisconsin Elections Commission, which has got to stop. It’s grossly unfair to them, and if it keeps up, we won’t be able to attract any talented people to administer our elections in this state.

And third, the endless fishing expedition being conducted by Michael Gableman and the constant smoke machine that some other partisans keep revving up about the November 2020 elections only serve to undermine the faith of the Wisconsin public in our elections and in our democracy.

That’s not healthy. And that’s got to stop, too.

And frankly, I worry that, when taken as a whole, the barge carrying all these new bills today may also be billowing out more smoke.

This is not to say that I disagree with everything in all these bills. Not at all. For instance, the bills by the Chair clarify a lot of processes and terms that needed clarification.

And I certainly agree that we should set clear rules for our elections, but let’s make sure that those rules are fair.

And let’s protect our freedom to vote rather than erect one barrier after another to the exercise of that fundamental freedom.

Unfortunately, some of these bills do erect such barriers.

First of all, two bills would make voting by absentee ballot more difficult for all voters in Wisconsin.

SB 935 would render an absentee ballot null and void for the pettiest of reasons. For instance, if I’m a witness for the absentee voter and I print my name, and I sign my name, and I put Madison, WI, down as my residence but I neglect to put my street down, should the voter I’m witnessing be disqualified because of that omission? The bill says yes, and that seems ridiculous to me. Even requiring a witness seems like a stretch to me, since the voter already is swearing about his or her identity. Now to make the witness have to fill out everything just right or the voter’s ballot is disqualified just adds another way to toss a perfectly good ballot into the waste basket.

SB 939 would prohibit the Wisconsin Elections Commission or any local clerk from sending out absentee ballot applications, en masse, to registered voters, as was prudently done during the pandemic. Our ability to exercise our freedom to vote by mail should not be needlessly curtailed by this blanket prohibition. Why shouldn't the Elections Commission be allowed to do this? If we want more people to be able to exercise their freedom to vote in our democracy, sending everyone an absentee ballot application makes sense, in general. And in specific, it makes a whole lot of sense during a pandemic. But this bill would nix both those options.

Second, one bill would make voting by absentee ballot especially more difficult for those in residential care facilities or retirement homes.

SB 935 would paternalistically require the notification of relatives of residents in long-term care facilities or retirement homes as to when special voting deputies are going to be there. Residents don't need their relatives looking over their shoulders when they're voting. This is an invasion of their privacy. Unless they have a legal guardian, residents should not have their freedom to vote interfered with in this obnoxious manner. What if they don't get along with "the relatives for whom the home or facility has contact information"? What business is it of the relatives, seriously?

SB 935 would also needlessly prohibit a personal care voting assistant from helping any resident of a residential care facility or qualified retirement home to register to vote. If the personal care voting assistant is there to help the resident fill out an absentee ballot, why can't the assistant help the resident register to vote? That distinction makes no sense. Plus, nursing homes that receive Medicare or Medicaid funding are required to support the residents' right to vote. That should include supporting residents who want to register to vote.

Third, one of the bills, SB 934, could erroneously toss voters from the voting rolls.

This bill would have the Wisconsin Elections Commission rely on the Electronic Registration Information Center (otherwise known as ERIC) to determine whether a voter has moved. Following that determination, the Commission must send a letter or a postcard to the voter. If the voter doesn't respond, the voter becomes unregistered. The problem with this is that the Wisconsin Election Commission's own data in 2020 showed that 7.07 percent of the voters who became unregistered because of ERIC's data actually had never moved and were wrongly deactivated. Such a high error is not acceptable when it comes to our freedom to vote.

Fourth, several of these bills would hog-tie the Wisconsin Elections Commission.

SB 940 would allow the Joint Finance Committee to gouge the staff or the funds of the Elections Commission if Joint Finance, on its own, says that the Elections Commission or the Department of Transportation or the Department of Corrections or the Department of Health Services

failed to comply with any election law. That would give Joint Finance a huge whip over the heads of the Elections Commission, with no decent check on that unilateral power.

SB 941 would give the Joint Finance Committee and the Joint Committee for Review of Administrative Rules the authority to block federal funds and federal guidance, which will make it very difficult for the Commission to do its job. It's also of dubious constitutionality: States aren't allowed to disregard federal guidance on the conduct of federal elections, for instance.

SB 941 would also inject hyper-partisanship at the staff level by mandating that each major political party gets its own legal counsel on the staff of the Wisconsin Elections Commission. The last thing we need is more partisan haggling at the Wisconsin Elections Commission.

SB 943 would require the Elections Commission to be nit-picked and hyper-monitored by the Joint Committee for Review of Administrative Rules. Every week, the Elections Commission would have to give to JCRAR "all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents." Are you going to allow the Elections Commission to do its job, or are you going to kill it by a thousand cuts?

So these are some of my biggest concerns.

Above all, I would appreciate it if we could all agree that:

- 1) The November 2020 elections were legitimate and move on,**
- 2) The staff of the Wisconsin Elections Commission has been doing an admirable job under incredibly difficult circumstances, and**
- 3) In Wisconsin, and in America, we all should have our freedom to vote protected.**

Thanks for considering my views, and I welcome any questions you might have.



February 7th, 2022

Committee on Elections, Election Process Reform and Ethics
Senator Kathy Bernier, Chair
State Capital, Rm 319 S
Madison, WI 53707

Dear Senator Bernier and members of the Committee:

The Wisconsin Board for People with Developmental Disabilities appreciates the opportunity to provide testimony the numerous proposals related to elections and voters. Our comments focus on SB 934, SB 935, SB 937, SB 939, and SB 941.

While some bills contain positive changes, which we specifically note in our testimony, other proposed changes will make it harder for people with disabilities to vote and will disproportionately disenfranchise this part of the electorate.

Common problems many voters with disabilities face when trying to vote

- Many people experience unpredictable disabilities, meaning they do not know from one day to the next if they will be able to leave the house for activities such as voting.
- Many have no way to get there. Many voters with disabilities are non-drivers and have few or no transportation options. Rides may need to be scheduled in advance and may not show up at all or on time.
- Many people with disabilities live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.
- Many voters with disabilities rely on friends, neighbors, extended family, care workers and the community for help. Voters with sensory or physical disabilities may need help marking a ballot, dropping off or mailing an absentee ballot, and getting information about when and how to register and vote.
- Many have no reliable access to the internet because of a lack of broadband infrastructure, no internet subscription, and/or no devices that connect to the internet.
- Polling places and voting documents are not always accessible.

Senate Bill 934 voter registration list

Under the bill, the Wisconsin Elections Commission would be required to mark the voter as ineligible and change their voter registration status if they change addresses and move within a municipality. The bill would insert an unnecessary administrative burden upon the voter to register again. Many voters may not understand they are no longer registered to vote after moving, leading to confusion and potential disenfranchisement the next time they attempt to vote. Registering to vote requires voters to have proof of residence documentation which voters may not have with them if they discover they are

Senate Bill 937 Indefinitely confined voters.

Wisconsin's indefinitely confined statute provides an important safeguard to ensure that many voters who are disabled or have chronic health conditions can cast a ballot. The bill includes several positive changes, including:

- Clarifying what it means to be indefinitely confined as a voter “who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” Advocates have supported the need to clarify the language.
- Providing a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver's license or state ID.
- Providing that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election.

BPDD has several concerns with the proposal.

Voters who have a photo ID and do not have access to the internet are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy of their ID without accommodation for their status as an indefinitely confined voter. BPDD recommends indefinitely confined voters be allowed to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined. The purpose of the signature should be to affirm the person's identity – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a driver's license or state ID. BPDD recommends resolving this issue by requiring indefinitely confined voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identity.

The bill would require an application for Indefinitely Confined Voter status that is separate from the absentee ballot applications which is widely available and familiar to voters. A separate form creates another administrative step for indefinitely confined voters and may cause confusion or unawareness of this option for people who need this status. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form; BPDD recommends continuing to have one form.

Senate Bill 939 absentee ballots

Many people with disabilities rely on absentee voting to exercise their right to vote because of barriers to independently getting around in their community, including to the polls. These barriers are consistent from election to election. Many non-drivers, people with chronic or intermittent health conditions, people with sensory disabilities and others face such significant mobility challenges that absentee voting

Senate Bill 941 administration of elections.

The US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting to all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law.

This proposal creates a mechanism whereby the legislature institutes an automatic delay implementing federal guidance until a legislative committee has given approval. State action which impedes the operation of the federal statutes (or regulation) are in direct conflict with the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions. Arbitrary delays in implementing federal guidance that facilitates equal access to the ballot for voters with disabilities risks disenfranchising this population of voters.

BPDD is charged under the federal Developmental Disabilities Assistance and Bill of Rights Act with advocacy, capacity building, and systems change to improve self-determination, independence, productivity, and integration and inclusion in all facets of community life for people with developmental disabilities¹.

Thank you for your consideration,



Beth Swedeen, Executive Director,
Wisconsin Board for People with Developmental Disabilities

¹ More about BPDD https://wi-bpdd.org/wp-content/uploads/2018/08/Legislative_Overview_BPDD.pdf.



Testimony to the Senate Committee on Elections, Election Process Reform and Ethics

February 7, 2022

Thank you, Chairwoman Bernier, Vice-Chair Darling, and members of the committee for hearing my testimony today. My name is Kyle Koenen and I am the Policy Director at the Wisconsin Institute for Law and Liberty. While we are supportive of much of this package, I will focus my comments on aspects of Senate Bills 935, 936, 940 and 941 today. We are also registering in favor of Senate Bills 934, 937, and 943, but do not have prepared testimony. Thank you to the authors for bringing this important reform package forward for consideration.

This past December, WILL released "[A Review of the 2020 Election](#)", a comprehensive examination of said election. A team of WILL researchers and attorneys spent 10 months submitting over 460 records requests to conduct in-depth statistical and legal analyses. As part of the process, we examined over 65,000 pages of documents, including 20,000 ballots and 29,000 absentee ballot envelopes. Our work has been cited extensively nationwide, with a recent Wall Street Journal editorial calling the review, "[The Best Summary of the 2020 Election](#)." I have submitted a summary of the report and would be happy to present our findings with my colleagues at a later date if the committee has interest.

Senate Bill 935

First, Senate Bill 935 would create an alternative process for absentee voting in residential care facilities and qualified retirement homes during a pandemic or an incident of infectious disease.

Wisconsin Statutes provide that two voting deputies will be dispatched to qualified retirement homes and residential care facilities by the municipal clerk or board of elections in the community where the facility is located. ¹

Despite this, on three separate occasions in 2020, WEC issued guidance that ran contrary to this statute, advising communities that they were not required to dispatch special voting deputies. We won't question the commission's motivations, and acknowledge the difficulty of the situation. However, it is abundantly clear that the advice was contrary to the letter of the law and had an effect on how clerks operated. Our report reviewed records from a sample of 35 communities that were required to appoint special voting deputies and found that only 2 communities

¹ Wis. Stat. 6.875(4)(a)

actually did so. We believe that the process laid out in the bill represents a reasonable alternative to the special voting deputy process in the event of a pandemic or infectious disease.

Senate Bill 935 also prohibits governmental entities from accepting grant money, equipment or materials from private sources for the purposes of administering an election. Last year, WILL released an in-depth report on how grants from the Center for Technology and Civic Life (CTCL) were administered in Wisconsin. Our review found that \$10.3 million was distributed to 196 communities, with approximately 86% of that funding going to the five largest cities in the state (Milwaukee, Madison, Green Bay, Kenosha and Racine). We also found disparities in funding on a per-capita basis, with cities like Racine and Green Bay receiving \$36 and \$53 per 2016 voter respectively. For comparison, Appleton and Waukesha only received \$0.51 and \$1.18 per 2016 voter respectively. Lastly, a statistical analysis found that CTCL grants had a potential electoral impact of approximately 8,000 votes in the direction of Biden. Government administration of elections should be impartial and fair, and the infusion of private dollars from various sources threatens that dynamic. This bill correctly remedies this problem by prohibiting private dollars from being used for election administration, period.

Lastly, our review found significant variation in how mistakes on absentee ballot certificates are handled. Despite records levels of absentee voting, absentee ballot rejection rates were considerably lower than usual in the Fall 2020 election than other recent elections, with 0.2% of ballots rejected. For comparison, the rejection rate was 1.35% for the Fall 2016 general election and 1.57% for the Spring 2020 election.

We also surveyed a sample of 50 communities, asking the extent in which they “cured” defective or incomplete absentee ballot certificates. Of the 21 responses we received, 13 indicated they took action to cure mistakes, while 8 said they did not. Consequently, we reviewed nearly 29,000 absentee ballot certificates from around the state to practically see how communities handled defective absentee certificates. We found that practices varied considerably, with some communities ignoring mistakes, some correcting them and others rejecting ballots outright. A consistent standard and practice is needed to ensure that a voter has an equal chance of having their ballot counted regardless of where they live. This bill accomplishes just that by defining what constitutes a complete absentee ballot certificate, and bars clerks from making corrections.

Senate Bill 936

Senate Bill 936 makes changes to the complaint process at the Wisconsin Election Commission that we believe are prudent. Currently, the commissioners have delegated their responsibility to decide complaints to the Chair and Administrator.

This delegation results in citizens who have filed complaints with the commission, as permitted by statute, having their complaints to essentially be decided by staff and not by the commissioners. These complaints should be handled in a timely manner and decisions should be made by the full commission at a public meeting. Another provision allows complaints against WEC to bypass the standard complaint process and go straight to circuit court, thus potentially allowing for a timelier disposition of a case. The need for timely resolution of election disputes is important to ensure that laws are properly followed and the rules are set prior to an election.

Senate Bill 940

The Help America Vote Act (HAVA) was passed by Congress in 2002 and made sweeping reforms to the nation’s voting process following the 2000 Presidential election. Among the provisions of this law, is a requirement for states to implement a centralized voter registration database that includes a “system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters.”² To identify registrants that are eligible to vote HAVA requires, among other things, that a state’s chief election official shall enter into an agreement with the Department of Motor Vehicles to “verify the accuracy of information provided on applications for voter registration.”³ Wisconsin fulfills this requirement under Wis. Stat. § 85.61.

As part of our review, WILL obtained records from WEC showing the extent of mismatches between the voter registration file and DMV records. Those mismatches are reflected in the table below for prior to the 2020 election.

DMV Mismatch Reasons – 2020 Pre-November Only

| Reason | Count | Percentage |
|-------------------------------|--------------|-------------------|
| 2 – Name and DOB Do Not Match | 274 | 1.17% |
| 3 – Name Does Not Match | 15,260 | 65.32% |
| 4 – DOB Does Not Match | 1,061 | 4.05% |
| 5 – No Record of DL # | 4,885 | 20.91% |
| S – Invalid Data Submitted | 66 | 0.03% |
| Z – No Matches Found | 1,815 | 7.77% |

Practically speaking, what does this mean? It means that over 23,000 people cast ballots despite having a mismatch between their voting registration record at WEC

² 52 U.S.C. § 21083

³ 52 U.S.C. § 21083(a)(5)(B)(i)

and their DMV record. While many of these mismatches may be the result of common variations in a name (Ex. Bill vs. William, or Jim vs. James.) or clerical transcription errors, it is impossible for WEC or clerks to verify the extent of these mismatches. The LAB audit confirmed as much in their review, stating “DOT does not provide WEC with any personally identifiable information, such as names or dates of birth.”

At some point in the process, WEC asks municipal clerks to send a letter to mismatched voters asking them to clarify the discrepancy. However, WEC informs the clerks that regardless of the results of the DMV check, it does not affect the voter’s eligibility, and the clerk has met their responsibility to verify the information once the letter has been sent. Whether the individual responds or not, nothing more is done. As a result, mismatches continue to exist in the system. This result renders the HAVA check meaningless. Why check for a mismatch if there is no consequence when one is found?

This lack of follow-through presents a potential weakness in Wisconsin’s electoral security. While you must show a photo ID to register in-person, Wisconsin’s mail-in registration by indefinitely confined voters could allow registration with only proof of residence, which includes documents that presumably could be easily fabricated.⁴ Because our current DMV check process is not used to determine the eligibility of a voter, any intentional subversion would go largely unnoticed. We cannot say whether this happens, because as stated above clerks and WEC are unable to see the extent of these mismatches. That is where Senate Bill 940 comes in.

First, the bill requires that DOT provide WEC the personally identifiable information (Name, DOB, DL#) needed for election officials to determine the source and extent of a mismatch. Second, the bill lays out a multistep process for election officials to correct errors resulting from a DMV mismatch. If the discrepancy is the result of a single piece of minor information being inaccurate, it empowers the commission to correct the discrepancy on the basis of reliable information. Third, if an election official is unable to obtain reliable information, or there are multiple discrepancies, they must mail the elector notifying them of the discrepancy. If the elector does not correct the mistake within 30 days, election officials would then change the voter’s registration from active to inactive.

The responsibility of fulfilling this process lies with WEC. However, the bill allows WEC to delegate any step of this process to municipal clerks. Lastly, to ensure full transparency, the bill requires election officials to document how each discrepancy is corrected. This would be especially helpful in any post-election reviews from the public, where personally identifiable information could not be disclosed.

⁴ While approved ID’s are accepted to prove residency, utility bills, bank/credit card statements, paystubs, and residential leases can be used to verify residency.

With easily accessible online and same-day in-person registration, Senate Bill 940 would be a prudent move towards ensuring accuracy in our voter rolls. It rightfully prioritizes correcting innocuous errors and removes a weakness in our current system.

Senate Bill 941

Senate Bill 941 increases both transparency and accountability in the voting process.

In the process of conducting our review, WILL had issues obtaining records on a number of occasions. I'll give you one example. In February 2021, WEC released a report that analyzed data from the November 2020 election. WILL requested data to recreate some of WEC's analyses, but were told that due to the dynamic nature of the voter registration list, we would be unable to receive the necessary data. This bill would fix this issue by requiring WEC to keep monthly snapshots of the voter file. It would also expand the information clerks are required to report to WEC following an election, making it easier for election watchers to spot potential issues to follow-up on.

Lastly, introducing bi-partisan legal counsel at WEC would be a prudent move towards ensuring a diversity of legal viewpoints are heard by commissioners. On a number of occasions leading up to the 2020 election, WEC issued legally questionable guidance to clerks, something that bi-partisan counsel could have prevented. A similar approach is taken by other states, most notably New York, who has bi-partisan Co-Executive Directors at the State Board of Elections.

Thank you, Chairwoman Bernier and committee members for hearing my testimony today. I would be happy to answer any questions.

Date February 7, 2022

To Senator Bernier, Chair; Senator Darling, Vice Chair; members of the Committee on Elections, Election Process Reform and Ethics

From Barbara Beckert, DRW Milwaukee Office Director and Director of External Advocacy for Southeastern Wisconsin

Re: Senate Election Committee February 7, 2022 Public Hearing

- Against - SB-941 **Elections Administration** Overseeing the administration of elections
- Information Only - SB-934 **Voter Registration List** Maintenance of the voter registration list, training of municipal clerks, data sharing agreements, pre-election procedures, lines at the polls on election day , and granting rule-making authority.
- Information Only - SB-935 **Election Fraud** Certain kinds of election fraud, private resources and contracts for election administration, who may perform tasks related to election administration, defects on absentee ballot certificates, returning absentee ballots to the office of the municipal clerk, appointment of election officials, allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and providing a penalty.
- Information Only - SB-937 **Indefinitely Confined Voters** Status as an indefinitely confined voter for purposes of receiving absentee ballots
- Against - SB-939 **Absentee Ballots** Absentee ballot applications, unsolicited mailing or transmission of absentee ballot applications and absentee ballots, secure delivery of absentee ballots, canvassing absentee ballots, voter registration requirements, electronic voter registration, and providing a penalty.

As the federally mandated Protection and Advocacy system for our state, Disability Rights Wisconsin (DRW) is charged with protecting the voting rights of people with disabilities and mandated to help "ensure the full participation in the electoral process for individuals with disabilities, including registering to vote, casting a vote, and accessing polling places." (Help America Vote Act, 42 U.S.C. § 15461 (2002)). DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.

In coordination with the Wisconsin Disability Vote Coalition, we provide training and educational resources to voters with disabilities, their families, and service providers. The hotline and trainings provide us with a frontline understanding of the barriers experienced by many voters with disabilities.

Voters with Disabilities

A significant number of Wisconsin voters have a disability. The CDC indicates that 26% (1 in 4) of adults have some type of disability. According to the American Association of People with Disabilities (AAPD), approximately 23% of the electorate in November election were people with disabilities. Many older adults have disabilities acquired through aging, although they may not formally identify as a person with a disability.

Historically voters with disabilities are underrepresented at the ballot box. Many experience barriers to voting including the following:

- Polling place and voting documents are not always accessible.
- High percentage are non drivers and lack access to transportation, especially accessible transportation
- Lack of photo ID and difficulty obtaining it because they don't have transportation to get to DMV, and DMV hours are very limited
- Limited information about their voting rights including disability related accommodations.
- Legally required accommodations such as curbside voting and ballot assistance are not uniformly available; some voters experience discrimination and denial of accommodations.
- Lack of access to the internet and/or devices that connect to the internet, and to equipment to copy photo ID.
- May live in a group home or place with many other people where ability to independently leave, get information, or get online is limited or restricted.

Federal Law and Voting Rights

As referenced in this testimony, the US Department of Justice and other federal agencies issue guidance to protect the fundamental right to voting for all Americans, including specifically addressing the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the Americans with Disabilities Act (ADA), the Voting Rights Act (VRA), the Help American Vote Act (HAVA), and other civil rights law. It is important that that these bills align with the protections afforded to people with disabilities by federal law.

SB-941 Elections Administration - Against

DRW has the following concerns about SB-941:

- Federal civil rights laws, as well as guidance from the US Department of Justice and other federal agencies, protect the fundamental right to voting for all Americans, and specifically address the rights of voters with disabilities to have equitable access to the ballot. These rights are protected by federal laws including the ADA, the VRA, HAVA, and other civil rights laws. It should not be optional to comply. Any state action that would impede the operation of the federal statutes (or regulation)

would raise constitutional issues, and fall under the Supremacy Clause, which establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions, and prohibits states from interfering with the federal government's exercise of its constitutional powers.

- The bills adds significant reporting requirements for municipal clerks without providing any funding to provide clerks with support to comply with these requirements.
- This bill requires that legal counsel for the commission be partisan and chosen by the legislative leadership of the two major political parties. Under current law staff positions are not partisan and are not selected by the Legislature.

Based on these concerns, we ask you to oppose SB 941.

SB-934 **Voter Registration List** Information Only

Based on DRW's review of the bill, we are very concerned about some provisions in this bill related to maintenance of voter registration lists. We also noted some provision that would be helpful for others with disabilities. For that reason, our comments are for Information Only. The following provisions in the bill merit comment because of their impact voters with disabilities.

- **Changes in status for Voters Who Move.** The bill would require that people who move within a municipality be marked ineligible to vote. Clerks would no longer be allowed to send the voter a confirmation notice, and update the information without requiring the voter to re-register.

Concern: Many people with disabilities experience housing insecurity and may move often. The current process initiated by the clerk provides a reasonable way for local election officials to maintain current registration information without requiring community members to re-register.

- **The bills would require that information received from ERIC be considered reliable for purposes of changing voter status to ineligible.** .
Concerns: The accuracy of ERIC data has been the subject of litigation, because of proven error rates in the range of 5 – 10 percent. In addition, ERIC relies in part on DMV data. In most states, the DMV has a role in assisting with voter registration, as required by the NVRA. This is not the case in Wisconsin, so DMV data is not as reliable a source as it may be in other states

- **Lines at Polling Places.**
This bill would require chief inspectors to report and document each occurrence of voters waiting in line for at least one hour before voting. It would require that

municipalities who report this take all necessary steps, including establishing additional polling places, to ensure that voters do not wait in line for an hour or more at future elections.

Long lines at the polling place are especially problematic for some voters with disabilities and older adults who are not able to wait in line for a long time. We support provisions in SB-934 to address this barrier.

An additional recommendation regarding long lines would be enforcing the Wisconsin law which requires that curbside voting be available for voters who because of disability are not able to enter the polling place. This accommodation is not consistently available, and we have received multiple reports of voters who have been denied this accommodation and are not able to wait in line. We ask policy makers to also take steps to ensure access to curbside voting.

- **Clerk Training.** The bill would create additional training requirements for municipal clerks including and requiring a clerk to complete at least three hours of training prior to conducting an election for the first time. We support this provision to address adequate training for clerks. Such training provides important information about voting rights, including the rights of voters with disabilities to have equitable access to voting, and disability related accommodations required by state and federal law.

SB-935 Election Fraud - For Information Only

DRW has appreciated the ongoing discussion with Senator Bernier to ensure the voting rights of care facility residents. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as our concerns about SB-395.

Voting In Care Facilities

- This bill would establish a new process to provide residents of nursing homes and other eligible care facilities with assistance needed to vote when a facility will not admit Special Voting Deputies (SVDs) because of a pandemic or other public health issues (flu, mrsa, etc). DRW supports the creation of a statutory language to ensure residents receive the needed assistance, although the process proposed in SB 935 is more restrictive than we recommend.
- DRW also supports allowing facility staff to be appointed as Personal Care Voting Assistants who would be trained and certified to conduct in person absentee voting, when SVDs are unable to enter due to public health restrictions. Training facility staff on voting including rights is helpful and will ensure that the assistance they

provide is informed by an understanding of residents' rights as protected by Wisconsin and federal law.

- SB 935 moves up the date by which SVDs must make arrangements to visit and requires SVD visits to be completed by no later than the "sixth working day preceding the election" instead of the current Monday, preceding the election.
Recommendation While this is an improvement on current law and provides at least a chance for absentee ballots to be sent and returned for those unable to participate in SVD visits, we would urge that SVD visits be completed no less than 10 days prior to an election and that ballots be sent out to those missing the visits the following day. This would provide at least nine days to receive, complete, and return the ballot. The current process does not provide sufficient time for ballots to be mailed to residents, and for residents to complete and return them.

Concerns:

1. Residents Need Assistance with Voter Registration.

When individuals move to a nursing home, they need to re-register to vote. It is important that they receive this assistance. The personal care voting assistants are not allowed to register voters and most SVDs are not allowed to register voters.

Other staff may be afraid to offer assistance with voter registration, as this bill would make it a felony if an employee "coerces" a resident to register to vote. We adamantly oppose any coercion. That being said, "coercion" is not defined and could be more broadly interpreted as offering assistance. Such a severe penalty is likely to result in staff being unwilling to take the risk of providing any assistance with voter registration and leave residents disenfranchised.

CMS requires nursing homes that receive Medicare or Medicaid funding to affirm and support the residents right to vote. That should include supporting residents with registering to vote if they wish to do so.

Recommendations:

- Give personal care voting assistants and SVDs the training and authority to register voters, as clerks can do at in-person absentee voting.
 - Include voter registration as part of the intake process. New residents should be asked if they need assistance with registering to vote, and if they wish to request an absentee ballot. This process would also help to ensure more of the smaller care facilities meet the requirement to participate in the SVD program.
- #### **2. Limiting assistance with voting to only the two assistants** may restrict the residents from getting the support they need to register to vote, to complete an absentee ballot to return a ballot.

Federal law requires election officials to allow a voter who is blind or has another disability to receive assistance from a person of the voter's choice (other than the voter's employer or its agent or an officer or agent of the voter's union). In addition, Federal law requires that Medicare/ Medicaid certified long term care facilities affirm and support the right of residents to vote. "nursing homes are required to support a resident in the exercise of their right (§483.10(b)(2)) to vote, such as assisting with absentee or mail-in voting, or transporting residents to polling locations or ballot drop-boxes in a safe manner."

Recommendation. Align Wisconsin law with the federal law to permit people with disabilities, including nursing home residents, to receive assistance from a person of their choice with completing their ballot, and to allow staff to assist residents with voting, as requested by the resident.

3. The bill would provide notice of the times and dates of absentee voting to each relative for whom the facility has contact information. Such notifications must be respectful of resident rights to privacy, and should only be done with the residents consent.

Recommendation: Ensure notification of relatives and any observation of the voting process complies with the residents' rights and protections. Residents should have to consent to notification of family members or others.

Use of Private Resources for Election Administration

- The bill would prohibit municipalities from applying for or accepting donations or grant moneys for purposes of election administration. Grant funding has provided support for some municipalities to improve accessibility concerns at polling places. In addition, during the pandemic, grant funding helping to address health and safety concerns at polling places. We heard positive comments from community members about the safety precautions taken using grant funding.
- **Recommendation:** If grant funding is not allowed, the Legislature should allocate funding for municipalities to address polling place accessibility, curbside voting, health and safety concerns, and other election administration expenses.

Absentee Ballot Certificates

- This bill would prohibit a municipal clerk from correcting a defect on the completed absentee ballot certificate envelope. Under current law, if the witness certificate is missing certain address information, the clerk receiving the ballot may complete that address information if known. Alternatively, the clerk may return the ballot to the voter so they may contact the witness and correct the defect if time permits.

Under the bill, if a clerk received an absentee ballot with missing information, the clerk would be required to return the absentee ballot to the voter. This would be required regardless of how much time remains to correct the issue or to cast a different ballot before polls close. The clerk would also be required to post a notification of the defect on the voter's voter information page on MyVote Wisconsin.

Concerns about SB 935

- We are concerned about the harmful impact on some voters with disabilities and older adults. The certificate envelope has very small print, is crowded, and **is not accessible** for many voters who have some vision loss. It's not a surprise that there are often mistakes in completing it correctly.
- Based on the experience of voters we assist, it has been very helpful for clerks to correct a defect on the absentee ballot certificate envelope, such as completing the witness address, and honoring the voter's intent. If this process changes and clerk must return the ballot to the voter, it is highly probable that there will not be enough time for the voter to correct the problem and return the ballot. While posting information on MyVote may be helpful for those with internet access and who see the posting, it would result in inequitable access as many voters do not have ready access to the internet and to device. In addition, unless MyVote sends a notification to the voter, they are not likely to be aware of the post.

Recommendation:

- Redesign the certificate envelope with guidance from national usability and accessibility experts. Provide more public education, and conduct usability testing on the instructions for absentee voters, and including older adults and voters with disabilities in the usability testing.
- Allow clerks to complete witness address information when possible.

SB-937 Indefinitely Confined Voters - For Information Only

DRW has appreciate the ongoing discussion with Senator Bernier about changes to update the Indefinitely Confined Voter Status and to protect this important option for disabled voters. Though DRW is unable to support the bill in its current form, our comments note specific provisions that we support as well as concerns.

Background. This bill makes changes to the Indefinitely Confined Voter Status. Wisconsin's indefinitely confined statute has been on the books for decades, and provides an important safeguard to ensure that many voters who are disabled, or have chronic health conditions can cast a ballot. An indefinitely confined voter is a person who, because of age, physical illness, or disability, has difficulty voting at their polling

place, and always wants to cast an absentee ballot. The Wisconsin Supreme Court affirmed that “indefinitely confined” status is for the voter to determine – it is not a medical diagnosis.

Wisconsin has been a leader in expanding community based long term care; over 80,000 people with disabilities and older adults are enrolled in community based long term care programs. Participants qualify for these programs by meeting a nursing home level of care, meaning their support needs are significant and similar to nursing home residents. The increasing number of individuals with long term health conditions such as Cerebral Palsy, Multiple Sclerosis, Muscular Dystrophy, ALS, and quadriplegia who live in the community rather than in a nursing home has increased the need for the indefinitely confined voter provision.

SB 937 addresses the following:

1. Further defines what it means to be “indefinitely confined.” An elector.....“who cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year.” Advocates have supported the need to clarify the language. The bill removes “age” as age in and of itself should not qualify someone – it requires frailty, physical illness, or disability.

Although this language provides some clarification, we continue to believe the term “indefinitely confined” is problematic. Voters who need this accommodation have shared that they are hesitant to apply because the terminology infers that they are “bed-bound” and unable to leave their home. We recommend the language used in some other states of *Permanent Absentee Voter Due to Disability*.

2. Provides a way for some (but not all) indefinitely confined voters who have photo ID to meet the requirement by providing the number of their driver’s license or state ID. This is a helpful accommodation but it is unfortunately limited to voters who can provide this electronically using MyVote Wisconsin.
3. Provides that a voter who fails to vote a ballot the voter receives as a result of his or her indefinitely confined status may be removed from the indefinitely confined status list only if he or she fails to vote the ballot at the spring or general election. Turnout among all voters is lower for primary elections and this change would prevent indefinitely confined voters from having to reapply to maintain their status due to not voting in a primary election.

Concerns about SB 937

1. Voters who have a photo ID and do not have access to the internet and to MyVote are NOT provided with an accommodation to meet the photo ID requirement. They are expected to provide a copy - no accommodation is made to their status as an indefinitely confined voter for whom this can create an undue burden. DRW does not support this provision.

Recommendation: allow these voters using a paper application to provide their ID numbers on the application, the same standard as used for voters who have access to MyVote.

2. Voters who do not have photo ID are required to provide the last 4 digits of their social security number to verify their identify. This could be an effective way of verifying their identity. However, the bill also requires the voter to provide an affirmation of a US citizen 18 or older that the elector is indefinitely confined and cannot travel independently without significant burden because of frailty, physical illness, or a disability that will last longer than one year. DRW does not support this provision.

This requirement is problematic for two reasons:

- The purpose of the signature should be to affirm the person's identify – not their health status. The Wisconsin Supreme Court has determined it is up to the voter to make this determination – it is not a medical diagnosis. Because of the subjective nature of this status, other citizens may feel unqualified to make such a determination and be unwilling to sign an affirmation. This requirement does not appropriately accommodate the voter and creates a different higher standard for those who do not have a drivers license or state ID.
- The legislation establishes a new crime for anyone who "Falsely make any statement for the purpose of qualifying as indefinitely confined". The new crime could be interpreted as applying to the person who makes the makes the affirmation and make them unwilling to sign.
- The requirement for another person to sign their application form may put the voter at risk for fraud because it will include the last 4 digits of their social security number.

RECOMMENDATION: Require these voters provide the last 4 digits of their SSN on their absentee ballot application. This information along with their birthdate should suffice to affirm their identify. This information should be sufficient to confirm the voter's identity. In addition, voters must receive assurances that that social security numbers will be guarded in a manner that will protect the voter from fraud or abuse.

3. Requires the Elections Commission to facilitate the removal of the indefinitely confined status of each voter who received that status between March 12, 2020, and November 6, 2020. A voter whose indefinitely confined status is so removed must submit a new application for indefinitely confined status in order to continue receiving absentee ballots automatically.

This requirement should not be needed as municipals clerks were already asked to

contact indefinitely confined voters after the 2020 election and advise voters who are not indefinitely confined to update their status.

Recommendation: Rather than remove these voters, they should receive notification that clarifies the requirements for indefinitely confined status and states their responsibility to update their status if they do not qualify. This will minimize confusion and ensure that those who qualify for this status do not need to re-apply. The process of reapplying can be difficult for voters with significant disabilities.

4. **Requires a separate application form from the absentee ballot application.** The absentee ballot application is widely available and well known. If a separate form is required, it will decrease awareness of the Indefinitely Confined voter status for citizens who need this status. Electors in need of an indefinitely confined status may not know to request this application. At a minimum, the absentee ballot application should continue to include language about the indefinitely confined voter status and direct voters to the other form.

Recommendation: Continue to have one form to ensure that voters who need this accommodation are aware of it. The current form clearly states that anyone who makes a false statement may be fined or imprisoned. This language is right next to the box that a voter must check to self certify as "indefinitely confined" and is very visible.

SB-939 Absentee Ballots - Against

Absentee voting is heavily utilized by disabled voters because so many have barriers to voting in person including lack of transportation, polling place accessibility issues, and/or disability related or health concerns that limit their ability to vote in person. Many also have limited access to technology and to the internet or disability related barriers to using technology.

SB-939 would create the new restrictions listed below that would make it more difficult for many disabled Wisconsinites to cast a ballot.

- Absentee voters would need to provide proof of identification for every election. Under existing law, a voter who submitted a copy of their photo ID when applying for an absentee ballot once, and has not moved nor changed their name, need not submit a copy of their ID again when they apply.
Concern: The voters we assist often struggle to provide a copy of their photo ID on My Vote or My Mail. Requiring this be mailed or uploaded to My Vote for every election would be a significant burden.

- Reduce the number of elections a voter can apply to receive ballots for with a single application to a single primary and general election pair. Under existing law, a voter can apply to receive ballots for every election in a calendar year.

Concern: A high percentage of voters with disabilities vote absentee and request absentee ballots for the year. Because of limited access to technology, and in many cases limited mobility, it would be a significant burden for many disabled voters to have to repeatedly reapply to vote absentee. Having to repeatedly complete and resubmit absentee ballot applications will create a burden for voters who disabilities such as blindness, MS, spinal cord injuries, cerebral palsy that make it difficult to complete forms either by hand or on line.

- Require all in person absentee voters to complete an absentee ballot application, even if they already have such a request on file.

Concern: Requiring voters who already have an absentee ballot request on file to complete the form again is unnecessary, inefficient, and will lead to longer waiting times. In addition, many individuals with disabilities may require assistance to complete the absentee ballot application, and will require election officials to provide this accommodation.

- Prohibit clerk from sending absentee ballot applications to anyone who has not requested them

Concerns: Sending absentee ballot applications to registered voters provides equitable access to absentee voting for all voters, including those who do not have access to the internet or a device to complete the form online or to download and print it. This restriction is especially troubling because the bill requires voters to repeatedly complete and submit their absentee ballot request. Many voters with disabilities will struggle with these new restrictions. It is truly a public service for our municipal clerks or the Wisconsin Election Commission to mail the absentee ballot applications to voters, as so many voters with disabilities and older adults are isolated and not able to easily obtain or print an application.

Absentee Ballot Return

Many voters with disabilities rely on a person of their choice to return their absentee ballot. Because of disability they may be unable to place their completed ballot in a mailbox, in a secure drop box, or return it to their clerk. Existing law does not restrict who may deliver a ballot for a voter. This bill would restrict who a voter may choose to return their ballot and create a felony to punish a person who return a voter's ballot in violation of these restrictions.

Concerns

While less restrictive than a 2021 proposal, there are several provisions which are very concerning.

- No one can return more than two ballots not their own for anyone not immediate family per election
- The person cannot be compensated to return the ballot.

Our concerns include the following:

Many people with disabilities and older adults live in a congregate setting. This includes Adult Family Homes (AFH), community based residential facilities (CBRF), supported housing, or apartment buildings. Because of lack of transportation, mobility restrictions, as well as unreliable mail delivery, many residents rely on paid staff to return their ballot. Those paid staff often assist multiple residents. In addition, volunteers often assist residents with voting including ballot return.

In addition to those living in congregate settings, these restrictions would impact many disabled and elderly individuals who live independently in their own home or apartment. Many are isolated and do not have access to family or other community members to assist them. They rely on paid staff to assist them with activities of daily living, including voting, and in many cases to assist with absentee ballot return.

If paid staff are no longer able to assist with absentee ballot return, it will disenfranchise many people with disabilities and older adults. Federal law allows any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

For the reasons noted, we ask you to oppose SB 939.

DRW welcomes the opportunity to work with policy makers to ensure that every eligible disabled voter has the opportunity to register to vote and cast a ballot, no matter where they live or how they vote. We are committed to ensuring that that Wisconsin elections are accessible and inclusive, and protect the rights of Wisconsinites with disabilities and older adults.

- For additional information or questions, please contact Barbara Beckert at barbara.beckert@drwi.org or 414-292-2724.

Disability Rights Wisconsin is the federally mandated Protection and Advocacy system for the State of Wisconsin, charged with protecting the rights of individuals with disabilities and keeping them free from abuse and neglect.

DRW is charged with protecting the voting rights of people with disabilities and mandated to help ensure the full participation in the electoral process for individuals with disabilities. DRW staffs a Voter Hotline and assists voters with disabilities and older adults, family members, service providers, and others.



Senate Bill 941

**Wisconsin State Legislature
Senate Committee on Elections,
Election Process Reform, and Ethics**

February 7, 2022

Stewart Whitson
Visiting Fellow

Opportunity Solutions Project

Chairwoman Bernier and members of the committee,

My name is Stewart Whitson, and I am a visiting fellow at Opportunity Solutions Project (OSP). OSP is a non-profit, nonpartisan advocacy organization dedicated to advancing policies that reduce barriers to work and promote free and fair elections by making it easy to vote, but hard to cheat.

Thank you for hearing this legislation before your committee. I am submitting this testimony in support of Senate Bill 941.

On March 7, 2021, President Biden signed Executive Order ("EO") 14019, titled "Promoting Access to Voting." Tucked into this EO were three new directives that, if left unchecked, will threaten the integrity of state elections across the country, including in Wisconsin.

First, the EO commands the head of every federal agency to submit to the president's Domestic Policy Advisor a plan outlining the steps their agency will take to "promote voter registration and voter participation." Tasking federal agencies led by political appointees to engage in get-out-the-vote efforts, and to coordinate their efforts through the president's Domestic Policy Advisor, raises serious legal and ethical concerns.

Second, the EO mandates that all federal agencies support "approved" third-party organizations to provide voter registration services on federal agency premises located in states, including Wisconsin. Determining which third-party organizations will be approved, by whom, and based on what criteria is conveniently missing from the EO and raises concerns that only those groups that benefit the president's political party will be allowed to engage in these voter registration efforts.

Third, and perhaps most troubling: This EO is nearly identical to a federal election takeover plan crafted by a radical left-leaning group known as Demos. A cursory review of this EO reveals a striking similarity between what this EO calls for and the plan developed by Demos and published on their website in December 2020.ⁱ Combined with the fact that both the former president and the former Director of Legal Strategies for Demos were both hired by the current administration shortly before this EO was announced, and both placed in key positions to carry out the plan, there is a genuine concern that an improper and unconstitutional effort to creep into the states and exert control over state-run elections is underway.

Notably, the Demos plan also called for the weaponization of the Department of Justice (DOJ) to be used to attack opponents who stand in the way of attempts to federalize elections. We have already seen this take shape with the DOJ's meritless lawsuits attacking state election integrity laws in Georgia and Texas, and through the voting guidance published by DOJ this past summer which reinterprets voting laws that have been on the books for decades.ⁱⁱⁱ

Recognizing the serious ethical, legal, and constitutional concerns that this EO raises, 34 members of Congress recently signed a letter demanding documents and answers.^{iv} As the federal congressional investigative efforts move forward, the Wisconsin State Legislature must step up and pass legislation to detect and stop this unconstitutional effort to use the power, resources, and reach of the federal executive branch to circumvent Wisconsin's state election laws.

Through the creation of two new reforms, Senate Bill 941 would help protect Wisconsin elections from this unconstitutional effort by the federal executive branch. Allow me to walk through each of those reforms.

First, this bill would limit the ability of the federal executive branch to use federal funding to advance its partisan agenda. Such improper behavior might involve enticing a state or local official to promote the president's interpretation of a voting law over the state court's conflicting legal opinion in exchange for federal funding. It might also entail efforts by the Biden administration to direct additional funding only to those districts that predominantly support his party, or only to agencies with whom voters in those districts are likely to interact. Federal election funding would then finance, on the backs of all taxpayers—even those who do not support the president's party—get-out-the-vote efforts for the Left and could improperly skew the result of future elections.

This bill would address this threat by creating a new requirement that before the governor may disburse federal funds to the Elections Commission, the Commission must first submit a plan for use of the funds to the Joint Committee on Finance. If the committee does not schedule a meeting to review the plan within 14 days of receiving the plan, the commission may implement the plan and the governor may disburse the funds. If the committee schedules a meeting to review the plan, the commission may not implement the plan, and the governor may not disburse the funds, without the committee's approval. Such a commonsense measure would enable the Wisconsin legislature to ensure that all election funding is allocated fairly and in a manner that will promote Wisconsin's goal of facilitating free and fair elections. Federal election funding that does not implicate any concerns on the part of the legislature will be allowed to be disbursed as usual, with no interruption to election operations.

Second, this bill implements new reforms that would limit the ability of the federal executive branch to use guidance or backdoor communications to intimidate or coerce state and local election officials in Wisconsin to administer state elections in a manner inconsistent with federal or state law.

This bill would achieve this by requiring state agencies to submit federal election guidance, and communications from the federal government related to that guidance, to the senate majority leader, the senate minority leader, the speaker of the assembly, the assembly minority leader, the chairpersons of the standing committees with jurisdiction concerning elections, and the co-chairpersons of the Joint Committee for Review of Administrative Rules (JCRAR) no later than 48 hours after receiving the guidance or communication. Under the bill, a state agency would be prohibited from taking any action to implement federal election guidance without the approval of JCRAR, except that if JCRAR does not schedule a meeting to review the guidance within 30 days of receiving it, the state agency may implement the guidance.

As alluded to above, with a newly weaponized DOJ staffed with President Biden's appointees, a wave of election guidance has been issued. More will follow. Such guidance can be misleading and intimidating and cause serious confusion for honest Wisconsin election officials attempting to do their civic duty and follow the law as they administer local elections. Requiring the Wisconsin legislature to examine any federal election guidance and communications related to that guidance to ensure it is accurate and lawful before state election officials implement it would give Wisconsin an opportunity to challenge inaccurate or unlawful guidance in court before it is carried out. It would also protect local officials in Wisconsin from inadvertently violating state law or being

coerced to do so through unlawful guidance, all while preserving the integrity of Wisconsin elections.

Under the U.S. and Wisconsin State Constitutions, the federal executive branch has no role to play when it comes to crafting state election laws. Yet, the current administration is attempting to do just that, through an EO signed in D.C. Whatever political party the president happens to hail from, Wisconsin cannot allow such unconstitutional encroachment into its state-run elections. This bill provides two important reforms that will enable the Wisconsin legislature to fulfill its constitutional duty to protect the integrity of its elections and to stop this federal executive overreach before it is too late. I strongly urge you to pass it.

Thank you for your time.

Stewart Whitson
Visiting Fellow
Opportunity Solutions Project (OSP)

ⁱ Presidential Executive Order 14019, Promoting Access to Voting, Federal Register, National Archives (March 7, 2021), <https://www.federalregister.gov/documents/2021/03/10/2021-05087/promoting-access-to-voting>.

ⁱⁱ Executive Action to Advance Democracy: What the Biden-Harris Administration and the Agencies Can Do to Build a More Inclusive Democracy, Demos (December 3, 2020), <https://www.demos.org/policy-briefs/executive-action-advance-democracy-what-biden-harris-administration-and-agencies-can>.

ⁱⁱⁱ See, e.g. "Justice Department Issues Guidance on Federal Statutes Regarding Voting Methods and Post-Election 'Audits' ", Department of Justice, Office of Public Affairs (July 28, 2021), <https://www.justice.gov/opa/pr/justice-department-issues-guidance-federal-statutes-regarding-voting-methods-and-post>.

^{iv} Rep. Ted Budd Leads Coalition Calling for an Investigation of Biden's Executive Order on Voting, Press Release (January 19, 2022), <https://budd.house.gov/news/documentsingle.aspx?DocumentID=1357>.



DEVIN LEMAHIEU

STATE SENATOR

Senate Committee on Elections, Election Process Reform and Ethics
Senate Bill 941: Overseeing the Administration of Elections
Monday, February 7, 2022

Thank you Chairwomen Bernier and committee members for hearing testimony on Senate Bill 941.

The rules governing our elections process must be both equitable and transparent. Senate Bill 941 will improve upon existing best practices and put in place new reporting requirements and legislative oversight to improve public confidence in our elections.

In March of last year, President Biden signed an executive order directing federal agencies to identify ways in which the agency can “promote voter registration and voter participation”. While I agree with the importance of encouraging every qualified citizen to participate in our elections, it is important to remember that elections are administered by states, not the federal government.

Senate Bill 941 ensures the people of Wisconsin, through their elected representatives, can review, amend, or block any efforts by the executive branch of the federal government to interfere with Wisconsin elections administration. This includes attempts to use coercive federalism, such as introducing federal requirements as a condition of receiving federal funds – to lure states into adopting new policies at the agency level and bypass the legislative process.

Within 30 days of an election, each municipal clerk must submit to WEC and their county clerk a report that provides certain registration and voting statistics. This legislation expands on the current reporting requirements, such as the number of defective ballots that were recreated and the number of provisional ballots cast. Senate Bill 941 also requires the county clerks to submit an accounting of the ballots sent to each municipality, the number of ballots cast, and the number of unused ballots. This report would be reviewed by the nonpartisan Legislative Audit Bureau.

Finally, the bill would require the legal counsel at the Wisconsin Elections Commission be partisan and appointed by the legislative leadership of the two major political parties. This change from nonpartisan to partisan counsel will advance transparency and guarantee viewpoint diversity at the commission.

The Legislature has the constitutional authority over election laws and administration in Wisconsin. Throughout the years, lawmakers have delegated that authority to various agencies charged with administering election law and conducting free and fair elections. The Legislature takes this responsibility seriously and has always taken an active role in refining or reshaping those agencies when it becomes necessary.

As elected officials, we are charged with providing the finest, most responsive government possible. When we identify violations of law and problems within a government agency or program, we have an obligation to fix those problems to deliver the best possible services to every Wisconsinite. Nowhere in state government is this charge more important than in the administration of elections.

Thank you again for your time and consideration of SB 941. These policy changes will improve and protect the integrity of future elections by increasing accountability and transparency. I respectfully ask for your support.

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ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

Testimony on SB 941 – Overseeing the Administration of Elections

Thank you Chair Bernier and members of the Committee for holding a public hearing on Senate Bill 941. I strongly believe everyone here today agrees that our elections should be accessible, secure, fair and transparent. This bill will further these bipartisan goals through required legislative oversight of federal actions, improved reporting requirements, and guaranteed viewpoint diversity at the Wisconsin Elections Commission.

Last March, President Biden signed an executive order directing federal agencies to identify ways in which they can “promote voter registration and voter participation.” This order elicited a response from members of congress concerned that the order would promote federal overreach. We all agree with the importance of encouraging every qualified citizen to participate in our elections, however, it is important to remember that elections are administered by states, not the federal government.

The distribution of federal funds to assist in and encourage certain election practices has become more frequent. Upon enactment of the Help America Vote Act in 2002, federal funds were provided to states to implement certain elections practices. Under the 2020 CARES Act, the federal government provided \$400M to states to assist in elections administration during the pandemic. More recently, a report from the Bipartisan Policy Center encouraged the use of federal funds to incentivize states to adopt certain election administration standards.

Any attempts by the federal government to insert itself in election administration should, at a minimum, require oversight by the state legislature. The bill before you today would require that federal guidance be reviewed by the Joint Committee for Review of Administrative Rules and plans for expenditure of federal elections funds be reviewed by the Joint Finance Committee.

Easily accessible data related to elections administration will only improve voter confidence in our elections process. Under current law, clerks are already required to submit reports to the elections commission and the county clerk on election statistics. This bill will expand these reports to include data on the number of ballots that were not counted and the reason why they were not counted, the number of ballots recreated, and the number of provisional ballots cast. These reports would be required to be available online for public access.

Finally, this bill will require the two existing legal counsel positions at the Elections Commission be partisan. This change will ensure that balanced perspectives are available for consideration by the commissioners.

Additional checks, greater transparency, and viewpoint diversity will only work to improve our elections in Wisconsin.

Thank you again for holding a hearing on this legislation.



Wisconsin

Holding Power Accountable

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**Testimony of Jay Heck,
Executive Director of Common Cause in Wisconsin**

Monday, February 7, 2022

**Wisconsin State Senate Committee on Elections, Election Process
Reform and Ethics**

Common Cause in Wisconsin (CC/WI) is the state's largest non-partisan political reform advocacy organization with more than 9,000 members and activists residing in every county in Wisconsin. We strongly support free and fair elections in this state and nation and oppose attempts to make voting more difficult and burdensome.

Much to the disservice to Wisconsin voters, the measures being considered by this State Senate Committee on Elections today were formulated without bipartisan cooperation or consultation, without any collaboration or consultation with CC/WI, or with little to no input from other non-partisan voting rights organizations in Wisconsin.

Furthermore, these measures were devised and made public only late last week and are being subjected to a "fast track" process in which the outcome has already been preordained. These measures have hardly been able to be viewed, digested and understood by the public and additionally by important, trusted election administrators like municipal and county clerks whose jobs are directly related to the bulk of the issues addressed in these bills have not been consulted nor had time to review these bills in this timeframe. Yet they are expected to be passed along party lines and sent to the full State Senate for a vote, as soon as this Wednesday, February 9. Such a process is disrespectful of the voters of Wisconsin who have a right to expect a fairer and more transparent legislative process.

Additionally, CC/WI believes that the following measures being considered today would have a detrimental effect on voter participation in Wisconsin and make it more difficult and burdensome to vote in a state that already has among the most extreme and restrictive voting laws of any state in the United States today.

Accordingly, CC/WI strongly opposes the following measures up for consideration in this committee today. We urge a “No” vote against them and further expect and will encourage Gov. Tony Evers to veto them should they be advanced and passed through the Wisconsin Legislature.

Senate Bill 935: This “catch all” measure purports to address certain kinds of election “fraud” and prohibits private resources and contracts for election administration without providing public resources, restricts who may perform tasks related to election administration, restricts the ability to correct minor mistakes/defects on absentee ballot certificates, restricts returning absentee ballots solely to the office of the municipal clerk, appointment of election officials, imposes restrictions on allowing an employee of a residential care facility or qualified retirement home to serve as a personal care voting assistant during a public health emergency or an incident of infectious disease, and imposes severe penalties.

Why CC/WI is opposed: This measure is a vast overreach. It imposes unnecessary restrictions on providing assistance to voters who are residents of nursing care facilities, reduces resources available to provide safe voting without providing additional public resources, restricts ability for election clerks to make common sense address corrections to absentee ballot envelopes which will result in qualified ballots not being counted, imposes unreasonable restrictions on who can be a poll worker and provides for unreasonably severe penalties. It will result in the disenfranchisement of voters for minor, technical mistakes.

Senate Bill 937: This measure severely restricts who can be considered or who qualifies to be an “Indefinitely Confined Voter” for purposes of receiving absentee ballots automatically and provides severe penalties for non-compliance.

Why CC/WI is opposed: It should be up to each Wisconsin voter to determine whether or not they want to receive an absentee ballot in the mail to utilize and not up to a partisan politician. This measure does not even consider a global pandemic, whether it be COVID or similar pandemics in the future, to be a sufficient reason to request an absentee ballot as an indefinitely confined voter. It would also require voters to apply for an absentee ballot for every election instead of just once, for subsequent elections as is now the case. The penalties for “violation” of this unnecessary measure are ridiculously and unreasonably punitive.

Senate Bill 938: This measure provides for the utilization of information from the Wisconsin Department of Transportation to verify U.S. citizenship and would require the designation: “not to be used for voting purposes” to be stamped on state issued driver’s licenses and other state issued photo ID.

Why CC/WI is opposed: This measure is completely unnecessary and xenophobic. Currently, only U.S. citizens may vote in elections and this additional classification is completely unwarranted and divisive. Furthermore, this measure will potentially disenfranchise qualified electors and relies on unreliable sources for citizenship information.

Senate Bill 939: This measure severely restricts the absentee ballot application process, restricts and prohibits the unsolicited mailing or transmission of absentee ballot applications and absentee ballots, restricts the secure delivery of absentee ballots, restricts the canvassing for absentee ballots, further restricts voter registration requirements, electronic voter registration, and provides unreasonable penalties for “violation.”

Why CC/WI is opposed: This unwarranted measure makes the entire process of voting by absentee ballot much more onerous and difficult. Absentee voters would need to provide proof of identification for every election. Under this bill, a voter must submit a separate application for each primary and the election associated with that primary for which the voter wishes to receive absentee ballots automatically. It would require the WEC to prescribe the form and instructions of the absentee ballot application and also unnecessarily require the absentee ballot application to be separate and distinct from the certificate envelope in which voters must seal and submit absentee ballots, the outer portion of which includes certifications of both the voter and a witness. Additionally, the bill requires that the application requires the voter to certify facts establishing that he or she is eligible to vote in the election and must include excessive and unnecessary information. In short, this measure discourages voting by absentee ballot, even for voters who have relied on this method of safe and lawful voting for years.

Senate Bill 940: This measure would require the Wisconsin Elections Commission to identify and seek a correction to any new or changed voter registration that contains any information different than what is contained by information compiled by the Department of Transportation within ten days by mailing a notice to the voter.

Why CC/WI is opposed: This measure is unreasonable and could result in the disenfranchisement of many voters because of a simple error or discrepancy in the information compiled by the DOT and on a voter registration form.

Senate Bill 941: This measure dilutes and diminishes the role of the non-partisan professional staff of the Wisconsin Elections Commission and provides for micromanagement of election-related decisions by partisan legislators. It would forbid WEC staff from taking any action to implement federal election guidance and procedures without the approval of partisan state legislators who are on the Joint Committee for the Review of Administrative Rules (JCRAR) with some exceptions.

Why CC/WI is opposed: This measure is very possibly illegal under federal law and it is nothing less than a power grab by partisan legislators seeking to seize control of the decision-making process from WEC staff and Commissioners. It also injects more partisanship into basic questions of election administration in the state.

Senate Bill 942: This measure requires the Wisconsin Elections Commission to submit an annual report to the Legislature's Joint Committee on Finance (JCF) detailing "all failures" of WEC and the Department of Transportation, Department of Corrections and Department of Health Services to comply with "certain election-related activities." It would abolish one or more full time positions in each of those agencies and lapse up to \$50,000 per day for "non-compliance" or for providing "erroneous guidance" as determined by JCF.

Why CC/WI is opposed: This measure is completely unreasonable and extremely punitive in both the reporting requirements and the penalties imposed by highly partisan legislators seeking to control the financial and policy-making process involved in Wisconsin elections. It is a power grab of the very worst kind and it is completely unwarranted.

Senate Bill 943: This bill requires the Elections Commission to weekly submit to the Joint Committee for Review of Administrative Rules all documents and communications from the commission that the commission issued in the previous week that are applicable to municipal clerks generally and qualify as guidance documents. If JCRAR determines that such a document or communication satisfies the definition of a rule under current law, JCRAR must notify the commission of that determination and the commission must notify the municipal clerks that the document or communication is withdrawn and no longer applicable.

Why CC/WI is opposed: This measure is micro-management in the extreme by partisan legislators over the everyday operations of the non-partisan WEC staff and is tantamount to a complete state legislative takeover by partisan legislators of Wisconsin elections.

Senate Bill 934 and Senate Bill 936: While CC/WI finds there are portions of these bills that are legitimately good ideas, they nevertheless are attached to other measures that fail to improve Wisconsin election law. For example, in SB 934, there are good provisions on security and list maintenance, but these are rolled into a bill that requires WEC to treat ERIC data that someone moved as 'reliable', when in 2019 the data proved to be unreliable and this treatment of voter registration information will result in a purge of eligible voters. The audit provision in SB 936, while not a Risk Limiting Audit as CC/WI supports, is an improvement on current statutes by requiring the audit to be pre-certification and done by hand. While there are reasonable provisions and fixes in some of these bills, they are attached to measures that harm voters, do nothing to further election integrity, and continue to erode confidence in our elections and democracy. For these reasons, CC/WI is opposed to SB 934 and SB 936.

Senate Joint Resolution 101: This constitutional amendment, proposed to the 2021-22 legislature on first consideration, does all of the following:

1. Provides that no state agency or officer or employee in state government and no political subdivision of the state or officer or employee of a political subdivision may apply for or accept any donation or grant of private resources for purposes of election administration.

2. Prohibits the use of a donation or grant of private resources for purposes of election administration.
3. Prohibits any individual other than an election official designated by law from performing any task in election administration.

A constitutional amendment requires adoption by two successive legislatures and ratification by the people before it can become effective.

Why CC/WI is opposed: This measure would prevent any city, town, village or municipality from applying or accepting any private donation for the purpose of mitigating the effect of COVID such as for masks, cleaning products, plastic shields, hiring poll workers or for any other reason even if there are insufficient public resources available for the purpose of making voting safe and free from possible infection and disease. There is no provision in this measure to provide increased public resources to replace private support for safe voting practices and would likely result in decreased voter participation.

Thank you for your respectful consideration of our views.